**PUBLIC ISLAMIC BANK BHD v. FADHIL HUSSEIIN ISHAK YASSIN MANSOR; MS CITAJAYA SDN BHD (PROPOSED INTERVENER)**

HIGH COURT MALAYA, SHAH ALAM
JAMHIRAH ALI JC
(ORIGINATING SUMMONS NO: BA-24MFC-473-12-2017)
[APPLICATION FOR EXECUTION NO: BA-38-399-04-2018]
30 DECEMBER 2022

**Abstract** – *The COVID-19 pandemic hit the entire world, resulting in the imposition of a total lockdown by the Government, causing disruptions to many activities. The COVID-19 Act 2020 ('Act') came into force providing temporary measures to reduce the effects of the COVID-19 disease, including modifying related provisions in several Acts. Whilst matters relating to the National Land Code ('NLC') were not included in the Act, the court may, in order to preserve the intention and aspirations of the Act, ie, to help reduce the effects and impact, in particular, on matters involving legal obligations and rights of the people and affected parties, exercise its inherent powers to allow suspension of time during the total lockdown period to be excluded in the computation of time period in the NLC, in this case, under s. 257(1)(g) of the NLC.*

***LAND LAW:*** *Order for sale – Extension of time – Payment of balance purchase price – Computation of 120 days under s. 257(1)(g) of National Land Code – Whether court empowered to allow suspension of time during total lockdown announced by Government during COVID-19 pandemic – Whether purchaser purely precluded under conditions beyond their control – Whether court could intervene to prevent injustice*

Pursuant to a foreclosure action, the plaintiff obtained an order for sale of the property charged by the defendant. At the auction, the proposed intervener ('MS Citajaya'), successfully bid for the property at the price of RM1,600,000 and paid a deposit sum of RM160,000. The completion date to settle the balance purchase price was on 3 August 2021, *ie*, 120 days from the auction date pursuant to s. 257(1)(g) of the National Land Code ('NLC'). In order to finance the purchase, MS Citajaya obtained a banking loan facility for the amount of RM965,100 from the Public Islamic Bank Bhd Kuala Terengganu branch. On 16 July 2021, MS Citajaya paid the differential sum of RM480,000 to the plaintiff's solicitors. However, when the movement control order ('MCO') was implemented by the Government of Malaysia under s. 11 of the Prevention and Control of Infectious Diseases Act 1988 consequent to the COVID-19 pandemic, MS Citajaya was unable to settle the balance purchase price by 3 August 2021. Therefore, MS Citajaya filed a notice of application to seek the court's leave for an extension of time to pay the balance purchase price within 120 days from the date of the sale and to

A intervene in the action. The plaintiff did not object to the application, taking the position that it was a judicial sale conducted pursuant to the court's order under the NLC, which fell within the court's sole discretion and exclusive jurisdiction and therefore, grant of an extension was solely within the judicial discretion. The Deputy Registrar allowed MS Citajaya's application. On
B 26 August 2021, MS Citajaya's financier disbursed the balance purchase price to the plaintiff and MS Citajaya, having complied with all the terms of the proclamation of sale, was issued the certificate of Form 16F from the court and the transfer of the property was completed. Dissatisfied with the said order, the defendant appealed. The issue in this appeal was whether the
C court has the discretion under the inherent powers to allow suspension of time during the total lockdown period announced by the Government and therefore, the 28 days during the total lockdown from 1 June 2021 till 28 June 2021 should be excluded in the computation of the 120 days stated in s. 257(1)(g) of the NLC.

D **Held (dismissing appeal with costs):**

**(1)** MS Citajaya, being the successful bidder and a *bona fide* purchaser of the property and, having paid the full balance price of the auction, had the *locus* to participate as a party to defend its rights in this proceeding. (para 15)

E

**(2)** MS Citajaya had taken the necessary steps to comply with the requirements and conditions under the order for sale and the auction. However, MS Citajaya could not meet the 120 days dateline, having been precluded under conditions that were unprecedented and beyond their control. MS Citajaya was not a *mala fide* purchaser. MS Citajaya
F had duly complied with all the terms and conditions of the proclamation of sale and had caused the balance of the purchase price of the property to be fully paid to the plaintiff and therefore, completed the sale intended. Therefore, MS Citajaya had an indefeasible title. (paras 27 & 28)

G **(3)** During the COVID-19 pandemic, due to the total lockdown, the majority of the business operations were severely impacted, including the Land Office's operation, MS Citajaya's financier and MS Citajaya's solicitor's firm. Though the banking sector was part of the essential services, this sector was operating under a reduced staff, with shorter working hours at the office premises, and likewise the Land Office. This
H unprecedented *force majeure* event had affected billions globally and was beyond anyone's control. Though this court was not conferred with the powers to extend the time stipulated in s. 257(1)(g) of the NLC, but, due to the unforeseen and unprecedented events that took place, which resulted in the total lockdown, justice required the court to invoke its
I inherent powers to prevent injustice or abuse to the *bona fide* purchaser. Therefore, the 28 days during the total lockdown from 1 June 2021 to 28 June 2021 was excluded in the computation of the 120 days stated in s. 257(1)(g) of the NLC. (paras 24, 29 & 31)

**(4)** The court also took cognisance of the fact that the application for the extension of time was served on the defendant. The defendant had filed its affidavit in reply but had failed to file its submission on the date directed by the court. The court had heard all parties. The decision made was not arbitrary. There was no high-handedness, impropriety and the decision made was transparent. The court had ensured that the interest of the chargor was safeguarded. Further, since, the appellant had not applied for a stay of execution of the Deputy Registrar's decision and MS Citajaya had paid the full balance purchase price and the property had since been transferred to the *bona fide* purchaser, the holder of the indefeasible title, the appellant could only challenge the title under s. 340(2) of the NLC under a fresh action. (paras 32 & 33)

**Case(s) referred to:**
*CIMB Bank Bhd lwn. Khoo Kang Poey & Satu Lagi [2022] 1 LNS 766 HC* ***(refd)***
*M & J Frozen Food Sdn Bhd & Anor v. Siland Sdn Bhd & Anor [1994] 2 CLJ 14 SC* ***(refd)***
*Malaysia Building Society Bhd v. Merit Aim Sdn Bhd & Anor; Cameron Mall Sdn Bhd & Anor (Interveners) [2012] 4 CLJ 269 HC* ***(refd)***
*Pannir Selvam Sinnaiyah & Anor v. Tan Chia Foo & Ors [2019] 1 LNS 2031 HC* ***(refd)***
*Santhi Krishnan v. Malaysia Building Society Bhd [2015] 1 CLJ 1099 CA* ***(refd)***
*Toh Hi Taa & Anor v. Citibank Bhd [2005] 1 LNS 394 HC* ***(refd)***

**Legislation referred to:**
National Land Code, s. 257(1)(g), (h), 267A, 340(2)
Prevention and Control of Infectious Diseases Act 1988, s. 11

*For the plaintiff - Ahmad Zamri Asaad Khuzami & Ahmad Dzulhaziq Ahmad Mahmod; M/s Che Mokhtar & Ling*
*For the defendant - Fadhil Husseiin Ishak Yassin Mansor; In person*
*For the proposed intervener - Suhaida Mohd Esa; M/s Azri, Lee Swee Seng & Co*

*Reported by S Barathi*

## JUDGMENT

**Jamhirah Ali JC:**

### Introduction

**[1]** This is an appeal by the appellant/defendant against the decision of the learned Deputy Registrar in allowing the intervener/purchaser's application for an extension of time to pay the balance purchase price within 120 days from the date of the sale pursuant to s. 257(1)(g) of the National Land Code (NLC).

**[2]** The only issue in this appeal is whether the court has the discretion under the inherent powers to allow suspension of time during the total lockdown period announced by the Government and therefore, the 28 days during the total lockdown from 1 June 2021 till 28 June 2021 should be excluded in the computation of the 120 days stated in s. 257(1)(g) of the NLC.

A

## Brief Facts

**[3]** Pursuant to the plaintiff's action for a foreclosure order in Suit BA-24 MFC-473-12-2017 in the High Court at Shah Alam, the plaintiff obtained an order for sale on 20 February 2018 against the property charged by the defendant. There was no appeal against the said order by the defendant.

B

**[4]** Subsequently, the plaintiff applied to the execution division of High Court Shah Alam to fix an auction date and reserve price to foreclose the charged property. The first auction date was fixed on 9 July 2018 with an initial reserve price of RM3,200,000. However, the first auction was unsuccessful and thereafter the plaintiff then filed several applications to fix a new auction date and the reserve price for the subsequent auctions.

C

**[5]** Eventually, the property was successfully auctioned on 5 April 2021 and the proposed intervener, MS Citajaya Sdn Bhd (MS Citajaya) was the successful bidder at the said auction at the price of RM1,600,000. MS Citajaya paid a deposit sum of RM160,000 and the completion date to settle the balance purchase price was on 3 August 2021 *ie*, one hundred and 120 days from the auction date pursuant to s. 257(1)(g) of the NLC.

D

**[6]** MS Citajaya applied for a banking loan facility for the amount of RM965,100 including business financing term takaful (the facility) from Public Islamic Bank Berhad Kuala Terengganu branch, to finance the said purchase. On 16 July 2021 MS Citajaya paid the differential sum of RM480,000 to the plaintiff's solicitors.

E

**[7]** However, MS Citajaya was unable to settle the balance purchase price by 3 August 2021 for the following reasons:

F

(i) the implementation of the movement control order (MCO) by the Government of Malaysia under s. 11 of the Prevention and Control of Infectious Diseases Act 1988 which commenced on 1 June 2021 and continued with the restriction movement control order (RMCO) commencing from 3 July 2021 (the said control orders);

G

(ii) due to the said control orders, the banking sector had shortened its operating hours to 2pm with only 60% of its employees allowed to be present physically at the bank premises, which had caused the delay in approving the loan facility and the issuance of the letter of offer to MS Citajaya;

H

(iii) due to the said control orders the law firms were not allowed to operate and subsequently, were only allowed to operate on 27 June 2021 with the condition that the legal firm must first obtain permission from MITI. The closure for 27 days resulted in a delay in the process of completing the loan documentation between MS Citajaya and its financier;

I

(iv) closure of Public Islamic Bank Kuala Terengganu branch premises for ten days due to Covid-19 infection resulted in the delay in execution of loan documentation and Form 19B by MS Citajaya's financier thus causing a delay in presenting the private caveat documentation on behalf of the financier at the PTG Selangor; and

(v) the PTG Selangor was also closed and was only allowed to operate again on 21 July 2021 with only 20% of its employees allowed to be present physically at the PTG office, which caused the delay in the presentation of the private caveat by MS Citajaya's solicitors.

**[8]** Therefore, MS Citajaya filed a notice of application on 6 August 2021 to seek the court's leave for an extension of time of the completion date, and to intervene in the action, *inter alia* for the following orders:

(a) Satu Perintah bahawa pihak MS Citajaya Sdn. Bhd. (No. Syarikat: 200701019479 (777491-T)) iaitu Pencelah yang Dicadangkan diberi kebenaran mencelah dalam tindakan di sini. Pencelah dibenarkan untuk lanjutan masa bagi bayaran baki harga jual beli bertarikh 3.8.2021 untuk tempoh empat belas (14) hari dari 3.8.2021; and

(b) Satu Perintah bahawa tempoh bayaran baki harga jual beli bertarikh 3.8.2021 dilanjutkan untuk tempoh empat belas (14) hari dari 3.8.2021.

**[9]** The plaintiff did not object to the said application for the court to grant an extension of time for payment of the remaining purchase price subject to the condition precedent contained therein. The plaintiff took the position that it is a judicial sale conducted pursuant to the court's order under the National Land Code, which falls within the court's sole discretion and exclusive jurisdiction, therefore, whether an extension ought to be granted, it is solely within the judicial discretion.

**[10]** On 24 August 2021, the learned Deputy Registrar granted an order, *inter alia*, as follows:

(i) notis permohonan pencelah yang dicadangkan dibatalkan; dan

(ii) tempoh akhir pembayaran baki belian adalah pada 1 September 2021 iaitu setelah dikecualikan tempoh sebanyak 28 hari mulai 1 Jun, 2021 sehingga 28 Jun 2021 iaitu sepanjang tempoh Total Lockdown 3.0 daripada tempoh masa kiraan 120 hari selaras dengan Seksyen 257(1)(g) Kanun Tanah Negara 1965.

**[11]** On 26 August 2021, MS Citajaya's financier disbursed the balance purchase price to the plaintiff and subsequently, MS Citajaya having complied with all the terms of the proclamation of sale, the court had issued the certificate of Form 16F and the transfer of the property had completed.

**[12]** The defendant dissatisfied with the said order by the learned Deputy Registrar, filed an appeal on 2 September 2021 to this court.

A **The Deputy Registrar's Decision**

**[13]** The learned Deputy Registrar in his grounds of judgment had considered the law, the facts of the case, issues and the unprecedented circumstances due to the Covid-19 pandemic that had forced the country into a lockdown. In his wisdom to exercise justice, taking into account the
B unforeseen circumstances related to public health, invoked the court's inherent powers to allow suspension of time during the total lockdown period announced by the Government and therefore, the 28 days during the total lockdown from 1 June 2021 till 28 June 2021 was excluded in the computation of the 120 days stated in s. 257(1)(g) of the NLC.

C **Findings Of The Court**

**[14]** Upon perusal of the cause papers filed herein and upon reading the written submissions filed by the parties and having heard the parties' oral submission, I ordered that the appellant's appeal be dismissed. My reasons
D are as stated below.

**[15]** At the outset, I find that MS Citajaya being the successful bidder and a *bona fide* purchaser of the property and having paid the full balance price of the auction has the *locus* to participate as a party to defend its rights in this proceeding.

E *Extension Of Time Under Section 257(1)(g) Of The NLC*

**[16]** Section 257(1)(g) of the NLC states that:

> 257(1) Every order for sale made by the court under s. 256 shall be in form 16H and shall:
>
> F
> (g) Specify that the balance of the purchase price shall be settled on a date not later than one hundred and twenty days from the date of the sale and that there shall be no extension of the period so specified; ...

**[17]** If the balance purchase price was not paid within 120 days, the sum
G paid as a deposit shall be forfeited as provided for in s. 257(1)(h) of the NLC:

> (h) Specify that where the balance of the purchase price is not settled on a date specified under paragraph (g), the sum paid as deposit under paragraph (f) to the chargee shall be forfeited and disposed of in the manner specified under s. 267A.

H **[18]** Paragraphs (g) and (h) in sub-s. 257(1) are new provisions which came into effect on 1 December 2001 with the National Land Code (Amendment) 2001 Amending Act A1104. The requirement to pay the balance purchase price within 120 days from the date of the sale is mandatory as the word "shall" that appears in s. 257(1)(g) of the NLC is 'directory' (see: *Santhi*
I *Krishnan v. Malaysia Building Society Bhd* [2015] 1 CLJ 1099; *Toh Hi Taa*

*& Anor v. Citibank Bhd* [2005] 1 LNS 394; *Malaysia Building Society Bhd v. Merit Aim Sdn Bhd & Anor; Cameron Mall Sdn Bhd & Anor (Interveners)* [2012] 4 CLJ 269)

**[19]** Therefore, I agree with the learned Deputy Registrar's decision that the court does not have the power to grant the extension of time to the purchaser to pay the balance purchase price under s. 257(1)(g) of the NLC.

*Whether The Court Has The Inherent Powers To Allow Suspension Of During The Total Lockdown Period Announced By The Government*

**[20]** It is my considered view that this court can take judicial notice of matters, events and public announcements by the Government in relation to the Covid-19 pandemic and the total lockdown that took place which is an issue raised in this case. Matters, events and public announcements by the Government relating to the pandemic and the implementation of the MCO are facts which are of general and common knowledge, facts which exist and it is accepted by the public. I drew guidance from the case of *Pannir Selvam Sinnaiyah & Anor v. Tan Chia Foo & Ors* [2019] 1 LNS 2031; [2021] 7 MLJ 384, where Evrol Mariette Peters JC (as Her Ladyship was then) observed the following:

> [82] At this juncture, it is pertinent to note that by virtue of s. 57 of the Evidence Act, **the court may take judicial notice of facts which are of general and common knowledge. 'When a Court takes judicial notice of a fact, it simply means that the Court declares that it will find that the fact exists**': per Abdul Malik Ishak J (as he then was) in *Bank Bumiputra (M) Bhd v. Mohd Ibrahim bin Salleh* [2000] 5 MLJ 778 at p 797 ...
>
> [84] Section 57 of the Evidence Act merely sets out matters which the court must take judicial notice of, but the list therein is not exhaustive. 'The Court under s 56 may also take judicial notice of matters which are of common and general knowledge': per Hashim Yeop Sani FCJ in *Pang Ah Chee v. Chong Kwee Sang* [1985] 1 MLJ 153 (FC).
>
> [85] The manner in which the court takes judicial notice of facts was expounded by Justice Syed Agil Barakbah in *Pembangunan Maha Murni Sdn Bhd v. Jururus Ladang Sdn Bhd* [1986] 2 MLJ 30 at pp. 31 to 32:
>
> > The important point to note is that s. 57 does not prohibit the courts from taking judicial notice of other facts not mentioned therein. **The matter which the court will take judicial notice must be the subject of common and general knowledge and its existence or operation is accepted by the public without qualification** or contention. The test is that the facts involved must be so sufficiently notorious that it becomes proper to assume its existence without proof.
>
> [86] A vital criterion of the fact taken judicial notice of is that sufficient notoriety must be attached to it, so as to make it proper for the court to assume its existence without proof. (emphasis added)

**[21]** The Covid-19 pandemic had hit the entire world and never in the history of pandemics had caused such disruption which resulted in the world coming into a gridlock. Many activities were restricted during the lockdown which was imposed by many countries. Inevitably, the pandemic had caused immense disorder in human life and it has taken many lives. The situation was crucial as the safety and life of every individual were at stake. As a consequence, the Government had to impose the MCO with a total lockdown. As one can remember these unprecedented days, during the total lockdown the situation was uncertain and unpredictable. Undeniably this had affected all forms of business and financial transactions. All movements were controlled to a point that most daily important tasks were put on a halt. In the best interest of the country, the Government had to find a balance between its citizen's life and the economy, thus the Covid-19 Act 2020 (Act 829) came into force which made provisions for temporary measures to reduce the effects of the Covid-19 disease including modifying related provisions in several Acts, *inter alia*, the Limitation Act 1953, Distress Act 1951, Courts of Judicature Act 1964, the Hire-Purchase Act 1967 and others. As a result, the courts too issued 'Arahan Ketua Hakim Negara Bilangan 8 Tahun 2021 – Pengecualian Terhadap Pemakaian Peruntukan Undang-Undang Berhubung Dengan Urusan Mahkamah di Seluruh Negara' that allowed to exclude the computation of time for filing of, amongst others, documents, cause papers, notice of appeals and execution of court orders. The banks suspended the repayment of loans, the date of completion of contracts was enlarged, the limitation period was extended, the lockdown period was excluded from the calculation of the time for delivery of vacant possession and the liquidated damages for late delivery of the vacant possession of a housing accommodation, *etc*. Unfortunately, matters relating to NLC were not included in the said Act, though the Parliament were aware of the situation and the general intention was to help the affected parties (refer to the Parliamentary Hansard when Act 829 was presented at the Dewan Rakyat for debate).

**[22]** As a result, s. 257(1)(g) was not affected by the Covid-19 Act 2020. However, the intention and aspiration during the presentation of Act 829 in Parliament were clearly to help reduce the effects and impact in particular matters involving legal obligations and rights of the people and the affected parties.

**[23]** The Government announced MCO 3.0, a total lockdown from 1 June 2021 to 14 June 2021 and was further extended from 15 June 2021 to 28 June 2021. During the lockdown, only the essential service sectors were allowed to operate. The courts, land office and legal firms were among the service sectors which were not categorised as essential services. Subsequently, legal firms were only allowed to operate on 27 June 2021

upon obtaining consent from MITI before being operational (see: Bar Council Circular No 202/2021 dated 1 June 2021; kenyataan media – SOP Perkhidmatan Guaman Sepanjang Tempoh Perintah Kawalan Pergerakan Fasa Pertama dated 1 June 2021; Bar Council Circular 129/2020).

**[24]** I agree with the submission by learned counsel for the plaintiff and the purchaser that due to the total lockdown, the majority of the business operations were severely impacted, including the land office's operation, the purchaser's financier and the purchaser's solicitors' firm. Though the banking sector was part of the essential services, this sector was operating under reduced staff with shorter working hours at the office premises and likewise the land office. This unprecedented *force majeure* event had affected billions globally and was beyond anyone's control, not the court, the plaintiff or the *bona fide* purchaser. No one was to be blamed for the unforeseen delays that had occurred. Therefore, should a *bona fide* purchaser be punished grossly when it could not meet the dateline due to this unforeseen delay?

**[25]** Section 257 of the NLC was amended to include paras. (g) and (h) in sub-s. 1. From the Hansard, it is clear that the intention of Parliament in amending the NLC to include the mandatory provisions in ss. 257(1)(g) and (h) was to protect the interest of the chargor and to ensure the bidders are genuine purchasers who have the financial capability to purchase the property which was auctioned and to prevent any non-serious bidder from participating and manipulating the auction.

**[26]** Further, if the balance purchase price was not paid within 120 days, under para. (h), the sum paid as a deposit to the chargee shall be forfeited and disposed of in the manner specified under s. 267A, which the balance after paying for expenses, if any, would be retained in the account of the chargor to reduce the amount due to the chargee. This obviously would benefit the chargor.

**[27]** In this case, there is sufficient evidence to prove that the purchaser/intervener had taken the necessary steps to comply with the requirements and conditions under the order for sale and the auction, however, due to the total lockdown announced by the Government, the purchaser could not meet the 120 days dateline. The evidence shows that the conduct of the purchaser was not such that they were trying to gain an advantage. The purchaser was purely precluded under conditions that are unprecedented and which are beyond their control. In short, the purchaser was not a *mala fide* purchaser.

**[28]** Learned counsel for the plaintiff also informed that the purchaser had duly complied with all the terms and conditions of the proclamation of sale. The purchaser has caused the balance purchase price of the property to be fully paid to the plaintiff and therefore, completed the sale intended therefrom upon extraction of Form 16Q by the court. Consequently, the

purchaser had extracted the sealed copy of the certificate for sale in Form 16F and the property had been duly transferred. Therefore, the purchaser now has an indefeasible title.

**[29]** Justice is one of the main principles of equity which has been adopted in dealing with matters pertaining to the NLC. As such, in this circumstance, though this court is not conferred with the powers to extend the time stipulated in s. 257(1)(g) of the NLC, but, due to the unforeseen and unprecedented events that took place which was caused by the Covid-19 pandemic which resulted in the total lockdown, the justice, in this case, requires the court to invoke its inherent powers to prevent injustice or abuse to the *bona fide* purchaser.

**[30]** This court is vested with inherent powers to be exercised towards the ends of justice or to prevent the abuse of the court process. In the case of *CIMB Bank Bhd lwn. Khoo Kang Poey & Satu Lagi* [2022] 1 LNS 766, the High Court referred to the following:

> [20] Dalam kes undang-undang *Stone World Sdn Bhd v. Engareh (M) Sdn Bhd* [2020] 4 CLJ 354; [2020] 2 MLJ 208 panel Mahkamah Rayuan menyimpulkan bahawa:
>
> > [63] Inherent powers of the court are separate and distinct source of jurisdiction from statutory powers of the court. They are residuary and reserve source of power. The inherent powers of the court are in addition to the powers specifically conferred by the rules on the court. They are complementary to those powers. The court is free to exercise them towards the ends of justice or to prevent the abuse of the process of the court. Thus, it can be exercised cumulatively and concurrently with other sources of power. It is part of procedural law, not substantive law. It is invoked in relation to the process of litigation (see *Halsbury Laws of England* (95th edn, vol 11, 2015), para 23). Their application depends on the circumstances of the case. *The significance of the doctrine of inherent jurisdiction lay in its flexibility, for the court can extend it to any instance which requires its intervention in the absence of precise statutory regulation, or where injustice or abuse might otherwise result. It should be exercised judiciously and should not be circumscribed by rigid criteria or tests* (*Wee Soon Kim Anthony v. The Law Society of Singapore Civil Appeal No 6000 of 2001* (unreported) ('*Wee Soon Kim Anthony*'). It must not be applied indiscriminately (see Malaysian Civil Procedure [2018] Vol 1 p 1246).
>
> [21] Dalam keadaan di mana plaintif tidak lagi mempunyai 'avenue' lain untuk menguatkuasakan hak mereka, mahkamah ini wajar memberikan deklarasi bahawa plaintif adalah Pemegang Serahhak dan mempunyai hak dan kepentingan undang-undang ke atas hartanah-hartanah tersebut.
>
> (emphasis added)

**[31]** Thus, based on the said unprecedented events and circumstances, in this case, to avoid injustice, it required this court to intervene and to exercise its discretion under its inherent powers, to allow suspension of time during the total lockdown period announced by the Government and therefore the 28 days during the total lockdown from 1 June 2021 till 28 June 2021 is excluded in the computation of the 120 days stated in s. 257(1)(g) of the NLC.

**[32]** The court also take cognisance of the fact that the application for the extension of time was served on the defendant. The defendant had filed its affidavit in reply but had failed to file its submission on the date directed by the court. The court had heard all parties. The decision made was not an arbitrary decision. There was no high-handedness, there was no impropriety, and the decision made was transparent. The court has ensured that the interest of the chargor was safeguarded. In *M & J Frozen Food Sdn Bhd & Anor v. Siland Sdn Bhd & Anor* [1994] 2 CLJ 14; [1994] 1 MLJ 294, a case which was decided before the amendment of the NLC, the Supreme Court laid down the principle that:

> We agree that the terms or conditions of sale may be varied, if having regard to the interest of both the chargor and the chargee, it is fair to do so; but the sale being a judicial one, has to be done by the court after giving the chargor the right to be heard. As the Court's power to order the sale including the authority to fix the price and condition of sale is derived from the statutory provisions of the NLC after giving the chargor the right to be heard, it is manifest that any alteration to the term of condition must likewise be exercised.

**[33]** Further, in this case since the appellant had not applied to a stay of execution of the learned Deputy Registrar's decision and the purchaser had paid the full balance purchase price and the property had since been transferred to the *bona fide* purchaser, the holder of the indefeasible title, hence, I am of the view the appellant now can only challenge the said title under s. 340(2) of the under a fresh action.

**[34]** I find the learned Deputy Registrar's decision was based on cogent consideration that has taken into account the unprecedented circumstances and the facts of the case that necessitate the court to exercise its discretion under its inherent powers to dispense justice and fairness with "just and equitable" principle.

**[35]** For the foregoing reasons, I, therefore, ordered that the appellant's appeal in encl. 93 be dismissed with costs of RM5,000.